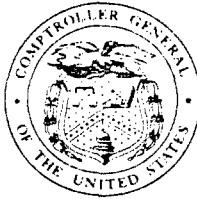


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Request for Reconsideration]

FILE: B-197236.4; B-197236.5 DATE: September 22, 1980

MATTER OF: Jerry's U-Drive, Inc.; George
Corporation -- Reconsideration

DLG04988

DIGEST:

1. Prior decision is affirmed where request for reconsideration disagrees with prior decision but offers no persuasive reason as to why decision is legally incorrect.
2. Where protester initially files timely protest and later supplements it with new grounds, new bases for protest must independently satisfy timeliness requirements of GAO Bid Protest Procedures.

Jerry's U-Drive, Inc., (Jerry's) and George Corporation (George) request reconsideration of our decision, Auto Discount Rent-N-Drive Systems, Inc.; Jerry's U-Drive, Inc.; George Corporation, B-197236, B-197236.2 and B-197236.3, July 28, 1980, 80-2 CPD 73, insofar as it pertains to their protests. In that decision, we dismissed their protests against contract awards for vehicle rentals to Payless Car Rental in Seattle and Spokane, Washington, because the protests were based on allegations that the awardee would not meet performance requirements of the specifications and therefore was nonresponsible, a matter not for our consideration under the circumstances.

DLG04989

The solicitation required offerors to have a dispatching point open during airline terminal facilities service hours with sufficient personnel to provide the required services and provided that if the terminal facilities were open to the public 24 hours a day, the contractor must have "coverage" 24 hours a day. In our decision, we stated as one of George's contentions that Payless was not open 24 hours a day and, therefore, did

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not comply with the requirements of the solicitation. We also stated that each protester maintained that its competitor does not offer around-the-clock "coverage" because during the early morning hours its office is locked but service is available on an "on-call" basis.

The requests for reconsideration contend the decision misconstrued the protesters' positions and did not address several points presented. George argues it did not claim Payless should have been open 24 hours a day but that, during the hours the airlines were operating, Payless was not open and operating with sufficient personnel and that Payless did not have the required coverage during the hours the airlines were not operating. George further contends that as Payless did not have an answering service during the off-hours, it was then not "on-call" as required by the solicitation. However, the essence of our decision was that such issues were not reviewable because they involve matters of responsibility as to which contracting officers must exercise the kind of judgment which we held in Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64, we would no longer review. Thus, we see no relevance to the distinction George seeks to make. While George also expresses disagreement with our conclusion that the requirement that an offeror be open with "sufficient personnel" to provide required services during airline service hours and have "coverage" during off-hours is not a definitive criterion of responsibility, compliance with which we would review, it presents nothing which persuades us that our original view was incorrect.


The decision was further deficient, George contends, because it failed to discuss the fact that GSA determined the previous year that Payless was nonresponsible whereas this year Payless was determined to be responsible. We were aware of this circumstance but did not discuss it in the decision because, in our view, the previous determination was not relevant to the affirmative responsibility determination made with respect to this procurement which -- as no question of bad faith or fraud was raised by the protester -- was not reviewable by this Office. George's request for reconsideration asserts that such a "contrary finding without explanation or change in circumstances" raises a question of bad faith or impropriety, thereby making the issue of responsibility reviewable. The fact that Payless was found to be nonresponsible last year and responsible this year provides no support for such an

assertion. Under Federal Procurement Regulations § 1-1.1205-2 (1964 ed.), information with respect to performance capability for responsibility determinations must be obtained on as current a basis as feasible. The "Plant Facilities Report" upon which the contracting officer relied last year stated Payless did not have the required number of cars on hand or on order, its office was about 10-12 minutes from the airport and that it was doubtful Payless could pick up air travelers within the required 15 minute period. The later report indicated Payless had increased its available space and the number of cars on hand and on order and that its office was about 10 minutes from the airport. Thus, it appears there was a change in circumstances apparent to the preaward survey personnel which could justify a finding of responsibility this year, and that there would be no basis for reviewing the affirmative finding as a result of bad faith.

Jerry's contends the decision should have considered its alternative argument that the specification was ambiguous and did not provide a proper basis for competitive bidding. However, in its letter of April 4, 1980, Jerry's stated that in preparing its bid, it sought clarification from the contracting officer as to the meaning of the requirement that a contractor's facility be open with sufficient personnel during the airline operating hours and to have coverage during the off hours. Although it was unable to get a definitive answer, it did not protest before the bid opening on October 3, 1979 and did not raise the ambiguity issue in its protest until its rebuttal to the agency's protest report.

Where a protester initially files a timely protest and later supplements it with new and independent grounds, the new bases for the protest must independently satisfy the timeliness requirements of our Bid Protest Procedures. See James G. Biddle Company, B-196394, February 13, 1980, 80-1 CPD 129. These procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening date be filed prior to bid opening, 4 C.F.R. § 20.2(b)(1) (1980). [As the record shows Jerry's knew of the alleged ambiguities and did not protest before the bid opening date, this issue is clearly untimely.]

Our prior decision is affirmed.


For The Comptroller General
of the United States